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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL
CATALDO, JULIAN
SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,
Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE LLC'S MOTION *IN LIMINE* 6
TO EXCLUDE TESTIMONY OF KENT
WALKER AND CHRIS PALMER**

The Honorable Richard Seeborg
Courtroom 3 – 17th Floor
Date: July 30, 2025
Time: 9:30 a.m.

I. INTRODUCTION

Plaintiffs have every right to call Google employees Kent Walker and Chris Palmer for impeachment or to otherwise respond to Google’s arguments and evidence at trial, because Plaintiffs may use them to contravene Google’s contention that it somehow has a culture that encourages reporting and addressing privacy violations and concerns. Google does not, and both witnesses are in possession of personal knowledge that may be used to controvert such assertions. Plaintiffs currently do not intend to use Messrs. Walker and Palmer for any other purpose than for impeachment or to otherwise respond to Google’s arguments and evidence.

II. ARGUMENT

To be clear, it is Google who claims that it has a culture that encourages whistleblowing to improve consumer privacy and user experience; it is not Plaintiffs who accused otherwise. For example, Google’s expert Dr. Donna Hoffman argued in her expert report that Google has a customer-centric approach that is committed to addressing users’ privacy concerns and improving the user experience. *See, e.g.*, Dkt. 473-2 ¶ 19 (opining that Google has a user-centric approach to privacy), ¶ 77 (stating there is a “culture of constant improvement and evolution”), ¶ 163 (summarizing that “feedback from Google employees clearly shows that Google develops products with a goal of improving user experience”). Where Google opened this door, Plaintiffs have every right to respond and impeach—such is the nature of the adversarial process.

Plaintiffs are granted wide latitude in their use of a defendants’ employees for impeachment—Rule 26 does not even require such disclosure. *Intel Corp. v. VIA Technologies, Inc.*, 204 F.R.D. 450, 451 (N.D. Cal. Dec. 12, 2001). Here, both Messrs. Walker and Palmer are in possession of material information that Plaintiffs may use to impeach and respond to Google’s narratives. For example, Mr. Walker has been associated with Google’s controversial decision to not retain Google Chat histories and its “Communicate With Care” program, that trained Google employees to avoid written communications on sensitive topics. *See, e.g., United States v. Google LLC*, No. 1:20-cv-3010-APM (D. D.C. May 30, 2025), Dkt. 1005 (submission in antitrust litigation detailing Mr. Walker’s 2008 “company-wide memo” directing that chat history at Google would be turned off by default because “Google continues to be in the midst of several significant legal

1 and regulatory matters,” will “keep facing these kinds of challenges,” and employees should
 2 therefore “write carefully and thoughtfully” “about hot topics,” because “anything [they] write can
 3 become subject to review in legal discovery” and “inevitably creates problems in litigation”); *see*
 4 *also United States v. Google LLC*, No. 23-cv-108 (E.D. Va. Aug. 27, 2024), Dkt. 1279 (Judge
 5 Brinkema characterizing the same memo from Kent Walker as an “incredible smoking gun” about
 6 Google’s attempts “to hide relevant information going back to 2008”). Surely Plaintiffs have every
 7 right to use this to impeach and respond to any attempts by Google to assert at trial that it has a
 8 culture encouraging employees to speak up and voice privacy concerns.

9 Similarly, Mr. Palmer raised privacy concerns and objections at Google as an employee
 10 regarding similar privacy controls for Google’s Incognito mode, and he was also shut down. His
 11 testimony should be usable at trial as impeachment evidence or to otherwise respond to Google’s
 12 arguments or evidence to the contrary, just like Mr. Walker’s testimony. Google does not get to
 13 talk about its general culture committed to addressing users’ privacy concerns without Plaintiffs
 14 being able to use specific examples where employee objections were not honored and respected,
 15 like with Mr. Palmer.

16 If Google does not make the argument set forth by Dr. Hoffman—and does not otherwise
 17 try to make a similar argument through some other mechanism—Plaintiffs are agreeable to not
 18 using Messrs. Walker or Palmer. Still, Plaintiffs need to be ready to call these witnesses at trial,
 19 because it was Google who opened the door to this issue through its own expert opinion.

20 **III. CONCLUSION**

21 For the foregoing reasons, the Court should deny Google’s Motion *in Limine* 6 and permit
 22 Plaintiffs to call Kent Walker and Chris Palmer if and when Google’s conduct at trial opens the
 23 door to impeachment or for Plaintiffs to otherwise respond. In the alternative, the Court should
 24 reserve ruling and revisit Google’s Motion *in Limine* 6 at the appropriate time during trial.

25 Dated: July 10, 2025

Respectfully submitted,

26 By: /s/ Mark C. Mao

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